SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 513.

FRANKLIN KNIGHT LANE, SECRETARY OF THE INTERIOR, AND CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE, APPELLANTS,

vs.

THE PUEBLO OF SANTA ROSA.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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3 Court of Appeals of the District of Columbia.

No. 2981.

THE PUEBLO OF SANTA ROSA, Appellant,
vs.
FRANKLIN KNIGHT LANE, &c., et al.

Supreme Court of the District of Columbia.

No. 33201. In Equity.

THE PUEBLO OF SANTA ROSA, Plaintiff,
against
FRANKLIN KNIGHT LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed January 28, 1915.

In the Supreme Court of the District of Columbia.

No. 33201. In Equity.

THE PUEBLO OF SANTA ROSA, Plaintiff,
against
FRANKLIN KNIGHT LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

To the Supreme Court of the District of Columbia:

The plaintiff states as follows on information and belief:

I. The plaintiff, the Pueblo of Santa Rosa, is and from time immemorial has been a town known by the common name of
4 Pueblo of Santa Rosa and consisting of civilized, sedentary, agricultural, and pastoral inhabitants who are and from time immemorial have been pueblo Indians known by that name and living in permanent houses of substantial construction in a village, of fixed and permanent location, built upon lands within the present County of Pima, State of Arizona, granted and conceded to said Indian pueblo by the laws and customs of the Indians antedating the Spanish discovery of America and also by the laws of Spain and

Mexico, said lands being within the territory ceded to the United States by the Gadsden Treaty, and to whom, as constituting said pueblo, said laws and customs conceded certain privileges and lands, to be used for the common benefit of the town and its inhabitants.

The inhabitants of said pueblo live and from time immemorial have continuously lived together in communal life in said town community known as the Pueblo of Santa Rosa. They govern and from time immemorial have governed themselves and their town community in accordance with definite laws and customs having the force of law and in their public and private affairs they obey and from time immemorial have obeyed said laws and customs and the lawful orders of officials elected by them in accordance with said laws and customs. They at regular intervals assemble and from time immemorial have assembled together in common council composed of the adult male inhabitants of the town and at said councils have resolved all matters concerning the town community and its inhabitants by rules and decisions having the force of law. They have from time immemorial maintained a high degree of civilization as compared with the wild or savage Indian tribes and have been peaceable except when attacked by savage tribes and have always defeated the attacks of such savage tribes and have never made war on white settlers or resisted established government and have cultivated and utilized the lands of their town community with much intelligence, skill, and industry.

The inhabitants of said pueblo were at the time of the Gadsden Treaty citizens of Mexico with large civil and political rights, and said inhabitants are now citizens of the United States and of the State of Arizona and reside in said pueblo of Santa Rosa, in said County of Pima and State of Arizona.

The laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed and exercised, (1) the right to have a common name, to wit, the Pueblo of Santa Rosa, and (2) the right and power to take, hold, manage, control, and dispose of real and personal property, including the land upon which its said village is situated and the surrounding lands, and (3) the right and power to contract and otherwise act as an entity by resolutions passed in common councils composed of its adult male inhabitants, and through its officers and representatives, in all matters concerning its interests, property, and affairs, and (4) the right and power to have perpetual succession, and (5) the right and power to sue and be sued as an entity and to appear and act as such before courts and governmental authorities, and (6) the right and power to maintain a permanent town organization and government, and to make, at common councils of its inhabitants, rules and laws binding upon the pueblo and its inhabitants, and to be controlled and managed by its inhabitants acting together according to law and according to rules so made, and to elect and

keep in office captains, alcaldes, and other town officers exercising much power and jurisdiction over said pueblo and its property and inhabitants for their common benefit and for the maintenance of order, the preservation of its property, the promotion of its interests, and the conduct of its affairs.

By reason of the facts above mentioned the plaintiff is, and from time immemorial has been, under the laws of Spain and Mexico and of the United States, an entity in fact and in law and a juridical person entitled to sue as such.

The plaintiff is and from time immemorial has been an Indian town community and one of many pueblo Indian town communities situated within the present and former territory of Mexico, which in character, organization and activity have been and are similar to the plaintiff and which existed as pueblo Indian towns at the time of the Spanish discovery of America and at all times since and which are and at all times have been known and designated in Spanish as pueblos de indios or Indian pueblos.

The plaintiff brings this suit in its own right.

II. The defendant, Franklin Knight Lane, is a citizen of the United States and a resident of the District of Columbia, and at the time of filing this bill was and now is duly appointed, qualified and acting as Secretary of the Interior of the United States of America, and as such is charged with the administration of the laws relating to public lands, and is sued as Secretary of the Interior of the United States of America. The defendant Clay Tallman is a citizen of the United States and a resident of the District of Columbia, and at the time of filing this bill was and now is duly appointed, qualified and acting as Commissioner of the General Land Office of the United States of America, and as such is charged with the administration, under the Secretary of the Interior, of the laws relating to public lands, and is sued as Commissioner of the General Land Office of the United States of America.

III. From time immemorial and since before the first explorations of the Spanish discoverers, and for more than three hundred years prior to the time of bringing this action, the Pueblo of Santa Rosa has owned and actually possessed and occupied all of that certain definite tract or parcel of land situate in Pima County in the State of Arizona, which land includes the village where the inhabitants of said pueblo reside and is bounded and described as follows: Commencing at a point or place known as Kabitque or Mountain Logia plain; thence running south a distance of twenty-four miles more or less to a point or place known as Okama or Okomo; thence running west a distance of twenty-four miles more or less to a point or place known as Mescalero; thence running north a distance of thirty miles more or less to a point or place, known as Sierra
6 Cabeza; thence running east a distance of thirty miles or less to the point or place of beginning; and containing an area of seven hundred and twenty square miles more or less. All of said tract

of land has continuously during all of said period been exclusively and actually occupied and possessed by said pueblo of Santa Rosa under open and notorious claim of right and absolute ownership, and said pueblo and its inhabitants have during all of this period occupied and utilized all of said land for the purposes of agriculture and grazing, and have resided thereupon. The actual boundaries above set forth of said land have from time immemorial been definitely fixed, known and recognized, and are marked by definite and recognized natural monuments, and the ownership, possession, use and occupation of said land by said pueblo and its inhabitants, for the purposes of agriculture and of raising and grazing cattle, of building dwellings and other permanent structures and for all other purposes, have always been coterminous with said boundaries.

IV. Spain during all the period of its sovereignty over the territory including the land herein described at all times recognized and in no instance disputed the ownership of said lands by the Pueblo of Santa Rosa and by repeated royal orders and decrees, recognized the Papago Indians and the inhabitants of said pueblo as free vassals of the Spanish Crown, entitled to all the protection in their property rights which was accorded to Spanish subjects, and recognized and confirmed the ownership of plaintiff in said lands. After the establishment of its sovereignty, Mexico recognized and never disputed the ownership of the land herein described by the Pueblo of Santa Rosa, and during all of the period of Mexican sovereignty the Papago Indians and the inhabitants of the Pueblo of Santa Rosa were Mexican citizens and entitled to and actually enjoyed property rights and all other rights identical with those of all other citizens of Mexico. Under the laws of Spain and Mexico the distinction was clearly recognized and established between savage Indians or indios barbaros, and peaceable Indians living in fixed abodes in permanent communities and subsisting by agriculture and grazing, known as indios de los pueblos or pueblo Indians.

V. The land hereinabove described is situate within the boundaries of the territory ceded by Mexico to the United States under what is known as the "Gadsden Purchase," and in accordance with the treaty made at the time of said purchase and known as the "Gadsden Treaty," and in accordance with the express terms of the treaty known as the Treaty of Guadalupe Hidalgo, all property rights of Mexican citizens were agreed to be inviolably respected by the United States. By the terms of said treaties the Papago Indians and the inhabitants of the Pueblo of Santa Rosa were entitled to become and actually became citizens of the United States. The said citizens of the Pueblo of Santa Rosa, in accordance with the provisions of said treaties, exercised the right given them thereby and elected to become citizens of the United States and they remained in the United States for the period designated by said treaties and did not declare their intention to retain the character of Mexican citizens.

VI. At the time of the acquisition from Mexico by the United States of sovereignty over the territory comprising said land and at the time of the making of said treaties the said pueblo of Santa Rosa was the absolute owner with complete, perfect, and undefeasible title to the land herein described against all governments and individuals and all the world, except such rights as pertained to the inhabitants of said pueblo as members thereof, and since said change of sovereignty this perfect title and ownership has continued to exist and now exists. The inhabitants of said pueblo of Santa Rosa ever since said change of sovereignty have been and now are actually in possession, use, and occupation of all of said lands, except in so far as recently they have been wrongfully disturbed in said use and occupation by trespassers without color of right or title as hereinafter set forth. By the terms of the treaties hereinabove mentioned the ownership of its lands by said pueblo of Santa Rosa was forever guaranteed and secured to it by the United States.

VII. Contrary to the rights of the plaintiff officers and agents of the Department of the Interior and of the Land Office, acting under and in accordance with the instructions of the defendants, have heretofore unlawfully offered and now are offering for entry as part of the public domain of the United States all of the land hereinbefore described. Said defendants and their officers and agents acting under them have heretofore granted pretended patents to third parties, covering portions of said land belonging to the Pueblo of Santa Rosa, and the defendants and their officers and agents acting under them are now threatening to issue other pretended patents to other parties to portions of said land. The defendants and the officers and agents acting under them have repeatedly trespassed upon the said lands belonging to the Pueblo of Santa Rosa and are now threatening to continue said trespasses repeatedly and continuously and are now threatening to enter upon said land within the boundaries thereof and there to make surveys, under the claim that said lands are a portion of the public domain of the United States and are the property of the United States and not of the Pueblo of Santa Rosa. The defendants and the officers and agents acting under them have caused to be published and circulated and are now publishing and circulating and threaten and intend to continue to publish and circulate maps purporting to be official maps of the Department of the Interior, showing that the said lands belonging to the Pueblo of Santa Rosa are part of the public domain of the United States and not owned by the Pueblo of Santa Rosa. The acts hereinbefore complained of will throw a cloud upon the title of the plaintiff to the land aforesaid and will cause many persons to attempt to settle upon the said land and enter the same in the Land Department of the United States, and the plaintiff will be unable to remove such persons without a great multiplicity of suits.

VIII. By the act of Congress of June 20, 1910, for the admission of New Mexico and Arizona as States the United States granted to

the State of Arizona for various purposes more than 2,000,000 acres and provided that the lands so granted should be selected under the direction and subject to the approval of the Secretary of the Interior from public lands of the United States within the limits of
8 Arizona by a commission of State officers and that for the purpose of such selection the State might procure United States public lands within its boundaries to be surveyed in the manner prescribed by the act of Congress approved August 18, 1894, which act was extended to Arizona and provided that from the lands surveyed upon application of the State the State could select and appropriate to itself the lands granted to it within sixty days after the filing of plats of surveys in the district land office of the United States pursuant to that statute. In order to procure such survey and to enable itself to select and appropriate to itself as a part of the lands so granted to it all or a part of the lands belonging to the plaintiff as above described, the State of Arizona has under said last named act applied to the defendant, Clay Tallman, Commissioner of the General Land Office, for the survey of certain land in Arizona, including all said land belonging to the plaintiff. Said application has been granted by the defendants, and the defendants, for the purpose of enabling and aiding the State of Arizona to select and appropriate to itself all or a part of the lands covered by said application including all or a part of the plaintiff's lands, have reserved the lands covered by said application including the plaintiff's lands for a limited time from any appropriation other than the selection by the State, and on or about June 27th, 1913, authorized the Surveyor General of Arizona to immediately survey all said lands covered by said application, including the plaintiff's lands, for the purpose of enabling the State to make its selection and for the same purpose on or about September 5th, 1914, directed the said surveyor general to immediately survey certain designated townships, including a part of the plaintiff's lands and on or about October 6th, 1914, advised the Governor of Arizona how the State should proceed in order to obtain said surveys and to enable itself to make said selections. Said surveyor general of Arizona, acting under the instructions of the defendants, is now surveying, or is about to survey, all of the plaintiff's lands for the purpose of enabling the State to select and appropriate to itself all or a part of said lands and for that purpose the defendants are about to cause to be filed township maps of such surveys in the district land office of the United States in Arizona and to cause such district land office to receive and accept such surveys and thus to enable the State of Arizona, as against these defendants and the United States, to select and appropriate to itself all or any part of the lands covered by such surveys, including the lands of the plaintiff. The governor and other officials of Arizona are about to take proceedings in pretended conformity with said acts of Congress to procure the survey of said lands, including the plaintiff's lands, and to select or appro-

priate to itself all or a part of the plaintiff's lands, and the defendants are about to direct and approve said selection and appropriation and to issue or approve the issuance to said State of patents from the United States covering all or a part of the plaintiff's said lands in disregard of the plaintiff's rights and claims and thus to place a cloud upon the plaintiff's title to its said lands and to put the State of Arizona and its officials in possession of all or a part of the
9 plaintiff's lands as ostensible owners thereof, all contrary to the protests of the plaintiff and in violation of its rights and to its great and irreparable damage.

By the act of Congress of February 19, 1909, known as the Enlarged Homestead Act, it was provided that in Arizona and elsewhere qualified persons may enter three hundred and twenty acres of non-mineral, non-irrigable, unreserved and unappropriated surveyed public lands not containing merchantable timber, provided said lands are first designated by the Secretary of the Interior as not being in his opinion susceptible of successful irrigation at a reasonable cost. By letters or orders dated respectively April 27, 1909, and May 1, 1909, the then Secretary of the Interior designated certain lands including all the lands hereinbefore described belonging to the plaintiff as being subject to entry under said Act and the defendants are causing to be exhibited to the public in the United States District Land Office in Phœnix, Arizona, tract books showing said designation and showing the lands belonging to the plaintiff as being open for entry and sale to settlers under said Act and caused the officials of the United States District Land Office at Phœnix, Arizona, to note upon the public tract books exhibited in said office, as against various townships including the townships comprised within the said lands belonging to the plaintiff words showing that the lands so noted are open to entry as and under proper conditions to allow entries of said lands by settlers. These defendants are now causing to be published and circulated official maps of the Department of the Interior showing the lands belonging to the plaintiff as being open for entry and sale to settlers under said Act and have authorized and ordered surveys to be made of all or a part of said lands and are thus offering said lands to the public for entry and sale under said Act and making it possible for entries to be made thereon and placing a cloud upon the plaintiff's title to its said lands, all contrary to the protests of the plaintiff and in violation of its rights and to its great and irreparable damage.

IX. On or about May 18, 1914, the Pueblo of Santa Rosa, together with other Indian pueblos similarly situated, petitioned defendant Franklin Knight Lane, Secretary of the Interior, setting forth their grievances and various matters of fact and law alleged in this complaint, and prayed that these defendants and those acting under them should abstain from listing for entry or sale as part of the public domain of the United States any part of said parcel of land belonging to the plaintiff and from recommending the issuance of

any patents covering any part of said land and from surveying or making allotment surveys within the boundaries thereof, and that all maps issued or exhibited as official maps by the defendants or those acting under them in the General Land Office or in any District Land Office or in any other office under the direction and control of defendants, and all maps and diagrams contained in publications under the jurisdiction and control of defendants should be altered and corrected so as no longer to show said land as being a part of the public domain, and other relief was prayed for in accordance with the rights of the petitioners as set forth in said petition. Under date of June 11, 1914, the defendant Franklin Knight Lane replied to said petition, finally and definitely denying the said petitioners and the plaintiff all relief of any nature whatsoever, and thereby finally and definitely held, ruled and decided that the land herein described is not the property of the plaintiff but is the property of the United States and a part of the public domain thereof and is under the jurisdiction of the defendants, stating among other things that if the tenure of the holding of the Indians is not by grant emanating from the Government of Spain or Mexico, it is not such a property right as was provided for and protected by the treaty, and that the mere possession of the land as Indian country with the right of use, did not prevent it from passing under the dominion of the United States as public land, whatever the obligation of the United States to the Indians might be and that no claim was presented by the Indians with reference to the lands in question to the Surveyor General of Arizona under the Act of July 15, 1870, and that by the Act of March 3, 1891, a Court of Private Land Claims was created for the adjudication of all private land claims in Arizona and that no claim appeared to have been presented to said court by the Indians, although it is provided by Section 2 of said Act that any claim not presented to such court within two years from the date of the Act shall be deemed to be abandoned and shall be forever barred and that said court having expired by limitation of law on June 30th, 1904, any claim that the Indians may have, can now be confirmed only by an Act of Congress.

X. The plaintiff intends to proceed with all due diligence to enforce in law and equity its rights as the owner of all the lands hereinbefore described.

XI. The land hereinbefore described is of great value, and the value thereof exceeds the sum of one hundred thousand ($100,000) dollars.

XII. The plaintiff alleges that damages at law will be inadequate to remedy the injuries herein set forth and that it has no other adequate remedy at law, and that the acts hereinabove set forth constitute irreparable injuries, and accordingly and forasmuch as plaintiff is remediless and has no adequate remedy or relief except in a court of equity, and to the end, therefore, that the defendants may,

if they can, show why the plaintiff should not have the relief prayed for, and may make full declaration and discovery of record of all the matters aforesaid and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under oath, answer under oath being hereby expressly waived, plaintiff prays:

First. That the defendants, their officers, subordinates, agents, employees and all those acting under them or by virtue of their instructions and authority be forever enjoined and restrained from offering for entry or listing for entry or sale as part of the public domain of the United States or otherwise any part or parts of said tract of land hereinbefore described, and from issuing or recommending the issuance of any patents, to individuals, the
11 State of Arizona, or otherwise, covering any part of said tract or any interest therein either for homestead, preemption, desert land purposes, or minerals, whether placer or quartz, or for mill sites or for any other purpose or purposes, from making any survey or surveys within the boundaries of said parcel of land except for the purpose of separating and delimiting the said parcel from the public domain, in case said parcel shall adjoin at any point the public domain, from publishing or continuing the publication of any official maps showing said parcel of land or any portion thereof as belonging to the public domain and open for entry or the issuance of patents; from entering on the said parcel without the consent of the town of Santa Rosa; from the establishment of a reservation or reservations upon the said parcel or any portion thereof, and from interfering in any way with the exercise by said pueblo of Santa Rosa of its ownership and control over said parcel of land, and from in any way attempting to exercise power or control over said land or any portion thereof.

Second. That the defendants, their officers, subordinates, agents, employees, and all those acting under them or under their authority or control, be ordered and enjoined to correct, in so far as they may be in their possession or subject to their control, all maps by them issued as official documents and purporting to show the parcel of land herein described as being part of the public domain or the property of the United States so that said maps, as corrected, shall show said parcel of land to be private property and not the property of the United States nor a portion of the public domain; and finally, that the plaintiff shall have such other and further relief as to the court may seem just and equitable.

May it please the court to grant to the plaintiff a writ of subpœna directed to the said defendants Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the Land Office, commanding them on a day certain to appear and answer this complaint and to abide by and perform such order and decree in the

premises as to the court shall seem proper and required by the principles of equity and good conscience.

Dated October 29, 1914.

THE PUEBLO OF SANTO ROSA,
By HENRY P. BLAIR,
Attorney of Record.

ROUNDS, HATCH, DELLINGHAM & DEBEVOISE,
CATES & ROBINSON,
HENRY P. BLAIR,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Henry P. Blair, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff herein; that he has read the
12 foregoing amended bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason that his complaint is verified by him and not by the plaintiff is that the plaintiff is absent from the District of Columbia; that the sources of his information and the grounds of his belief are statements made and information given to him by associate counsel familiar with the facts.

HENRY P. BLAIR.

Sworn to and subscribed before me this 30th day of November, 1914.

[SEAL.] ARTHUR HELLEN,
Notary Public, D. C.

Subpœna.

Issued January 28, 1915.

* * * * * * *

The President of the United States to, 1, Franklin Knight Lane, Secretary of the Interior, &, 2, Clay Tallman, Commissioner of the General Land Office, defendants:

You are hereby commanded to appear in this court on or before the tenth day, exclusive of Sundays and legal holidays, after the day of the service of this subpœna upon you and answer the exigency of the bill under pain of attachment and such other process of contempt as the court shall award, and if your appearance in this suit be not entered in the clerk's office within said time the bill may be taken for confessed.

Witness, the Honorable J. Harry Covington, Chief Justice of said court, the 28 day of Jan., A. D. 1915.

[SEAL.] JOHN R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Assistant Clerk.

H. P. BLAIR, *Attorney.*

Marshal's return.

Served copy of within on defendants personally.
Jan'y 28, 1915.

MAURICE SPLAIN, *Marshal.*
C. R. S.

Order for appearance.

Filed January 29, 1915.

* * * * * * *

The clerk of said court will enter our appearance for the defendants.

PRESTON C. WEST,
C. EDWARD WRIGHT,
Attorneys for Def'ts.

18 *Motion to Dismiss.*

Filed February 20, 1915.

* * * * * * *

Come now the defendants in the above-entitled action, by their attorneys, and move to dismiss the plaintiff's bill; and for cause show:

(1) That the bill shows on its face no capacity in the plaintiff, styled as "The Pueblo of Santa Rosa," either to begin or maintain this or any other suit, "in its own right," or otherwise, in that the bill fails to show that the alleged "Pueblo" is a body politic incorporated or existing under the laws of the United States or the State of Arizona, or that it is under any law a body politic and corporate, with power to institute and maintain actions at law or suits in equity.

(2) That, as appears in and by the bill exhibited herein and from well-known facts and laws of which the court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain in its alleged name or own right, any suit at law or in equity in any court; but, on the contrary, it appears that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occu-

pying public lands, the legal title to which is in the United States, by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

(3) That in and by the plaintiff's bill, no such title is shown in the so-called "Pueblo" as authorizes the institution and maintenance of any action or suit in the name of the "Pueblo of Santa Rosa" for the relief sought as to the lands mentioned and described in said bill.

(4) That the bill shows on its face that the lands involved were ceded to the United States by the Republic of Mexico under the treaty of Mesilla (commonly known as the "Gadsden Purchase") and that legal title thereto is in the United States, the Indians merely occupying the land by sufferance of the United States; and that therefore the United States is a necessary party to the suit, but has not, in this behalf, consented to be sued.

(3) That the bill seeks to control the discretionary action of the defendants in matters exclusively within their jurisdiction under acts of Congress.

Wherefore they pray that the bill be dismissed with their reasonable costs, and that they be permitted to go without day.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney.

14 *Opinion.*

Filed April 12, 1916.

* * * * * * *

This is a suit in equity brought by what is called the Pueblo of Santa Rosa against the present Secretary of the Interior and Commissioner of the General Land Office, and sweeping injunctive relief is sought, the first prayer of the bill asking that the defendants, their officers, subordinates, etc., be forever enjoined and restrained from doing a great many things that are outlined in the prayer, which concludes by asking that the injunction sought shall restrain the defendants "from interfering in any way with the exercise by said Pueblo of Santa Rosa of its ownership and control over" the lands described in the bill of complaint "and from in any way attempting to exercise power or control over said land or any portion thereof." By the second prayer of the bill, a mandatory injunction is sought against the defendants, their officers, etc., to require them to correct, in so far as they may be in their possession, or subject to their control, all maps by them issued as official documents and purporting to

show the said parcel of land as being part of the public domain or the property of the United States, so that said maps as corrected shall show said land to be private property and not the property of the United States, nor a portion of the public domain; and there follows the prayer for general relief.

The defendants have filed a motion to dismiss the bill, which motion, under the new equity rules, takes the place of a demurrer. The grounds of the motion are as follows:

"(1) That the bill shows on its face no capacity in the plaintiff, styled as "The Pueblo of Santa Rosa," either to begin or maintain this or any other suit, "in its own right," or otherwise, in that the bill fails to show that the alleged "Pueblo" is a body politic incorporated or existing under the laws of the United States or the State of Arizona, or that it is under any law a body politic and corporate, with power to institute and maintain actions at law or suits in equity.

"(2) That, as appears in and by the bill exhibited herein and from well-known facts and laws of which the court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain in its alleged name or own right, any suit at law or in equity in any court; but, on the contrary, it appears that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occupying public lands, the legal title to which is in the United States, by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

"(3) That in and by the plaintiff's bill, no such title is shown in the so-called "Pueblo" as authorizes the institution and maintenance of any action or suit in the name of the "Pueblo of Santa Rosa" for the relief sought as to the lands mentioned and described in said bill.

"(4) That the bill shows on its face that the lands involved were ceded to the United States by the republic of Mexico under the treaty of Mesilla (commonly known as the "Gadsden Purchase") and that legal title thereto is in the United States, the Indians merely occupying the land by sufferance of the United States; and that therefore the United States is a necessary party to the suit, but has not, in this behalf, consented to be sued.

"(3) That the bill seeks to control the discretionary action of the defendants in matters exclusively within their jurisdiction under acts of Congress."

In order that the grounds of the motion may be fully apprehended an analysis of the bill of complaint seems to be requisite.

The bill alleges that the plaintiff is, and from time immemorial has been, a town known by the common name of Pueblo of Santa Rosa, and that it is composed of civilized, sedentary, agricultural and pastoral inhabitants, who are, and from time immemorial have

been, Pueblo Indians, known as such, and living in permanent houses in a village of fixed and permanent location, built upon the lands hereinafter described, which are said to be situated within the present County of Pima, in the State of Arizona, which lands have been granted and conceded to said Pueblo "by the laws and customs of the Indians antedating the Spanish discovery of America, and also by the laws of Spain and Mexico," these lands being within the territory ceded to the United States by the Gadsden treaty.

It is further alleged that the inhabitants of said Pueblo have lived, and continued to live, in communal life in said Pueblo; that they govern, and from time immemorial have governed, themselves and their community, in accordance with definite laws, and customs having the force of law, which have always been obeyed by the inhabitants; that at regular intervals they assemble in common council, composed of the adult male inhabitants of the Pueblo, and that such councils have legislated on matters concerning the Pueblo and its inhabitants by rules and decisions having the force of law.

It is alleged that these people have always maintained a high degree of civilization as compared with the wild or savage Indian tribes, and have always been peaceable and have never made war on white settlers or resisted established government.

It is further alleged that the inhabitants of said Pueblo were, at the time of the Gadsden treaty, citizens of Mexico, with large civil and political rights, and that they are now citizens of the United States and of the State of Arizona. The bill further alleges that "the said laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed and exercised" all of those rights and privileges that are usually
16 vested in a municipal form of government when established by law, and by reason of these facts the plaintiff claims that it is, and from time immemorial has been, under the laws of Spain and Mexico and of the United States "an entity in fact and in law a juridical person entitled to sue as such;" and it brings this suit in its own right.

In view of these allegations of the bill of complaint, a question arises whether the first two grounds of the motion to dismiss are maintainable. The first of these grounds alleges that the bill does not show any capacity in the plaintiff either to begin or maintain this or any other suit in its own right or otherwise, in that the bill fails to show that the plaintiff is a body politic incorporated or existing under the laws of the United States or the State of Arizona, or that it is under any law a body politic and corporate, with power to institute or maintain suits at law or in equity.

It is true that the bill does not allege in so many words a distinct grant of corporate character, power and authority by action of any sovereignty power, under which the inhabitants of the alleged Pueblo have lived, unless the allegation of the bill to the effect that "the laws and customs of the Indians, and also the laws of Spain and of

Mexico, at all times conceded to the plaintiff" the corporate authority and power claimed in the bill, as quoted above. But the bill does allege, as a matter of fact, and on this motion the allegation must be taken as admitted by the defendants, that from time immemorial the plaintiff has exercised and claimed to exercise the corporate power and powers set out, which include among other things the right and power to sue and be sued as an entity, and to appear and act as such before courts and governmental authorities. Indeed, the bill sets out a form of government somewhat similar in its general characteristics, to the old New England townships; a form of government, simple it is true, essentially democratic in its governmental character, but efficacious as a governmental agency for a simple people living under conditions that present none of the complexities of modern aggregations of people maintaining a varied social order.

The second of the first two grounds of the motion to dismiss alleges that, as appears by the bill of complaint, and from well known facts and laws of which the Court will take judicial notice, there is no such thing as a "Pueblo" in law existing in the State of Arizona, with the right to hold or own property, with the privilege to sue or be sued, or to institute or maintain, in its alleged name or own right, any suit at law or in equity in any court; but, on the contrary, that said "Pueblo" is merely a settlement of Indians under the tutelage and control of the United States, occupying public lands, the legal title to which is in the United States by sufferance of said United States, and that said settlement of Indians is without legal entity or capacity to maintain this or any suit.

Assuming, without deciding however, that the plaintiff has a corporate character which would enable it to maintain in a Court of the United States, suits in the assertion or protection of property rights, let us consider for a moment the character of this particular alleged Pueblo.

17 Its inhabitants are Papago Indians, who are described in that valuable publication issued by the Bureau of American Ethnology in the Smithsonian Institution, called "The Handbook of American Indians," part two, page 200, as:

"A Piman tribe, closely allied to the Pima, whose original home was the territory south and southeast of the Gila River, especially south of Tucson, Arizona, in the main and tributary valleys of the Rio Santa Cruz, and extending west and southwest across the desert waste known as Papagueria, into Sonora, Mexico."

This authority further states that, like the Pima Indians, the Papagos "subsist by agriculture—maize, beans, and cotton formerly being their chief crops, which they cultivated by means of irrigation."

The Handbook further states:

"An extensive trade in salt from the great inland lagoons, was formerly conducted by the tribe, the product finding ready sale at Tubac and Tucson. Their present principal crops are wheat and

barley. They are also stock raisers, and in recent years many of them have gained a livelihood by working as laborers, especially on railroads and irrigation ditches. * * *

"From early times the Papagos have been known as a frugal and peaceable people, although they by no means lack bravery when pressed by their enemy, the Apaches, from whose raids they suffered severely. Their typical dwelling is dome-shaped, consisting of a frame-work of saplings, thatched with grass or leafy shrubs, with adjacent shelters or ramada. These lodges are from 12 to 20 feet in diameter and sometimes the roof is flattened and covered with earth."

The same authority gives us the Papago subdivisions or settlements, so far as known, including, in the list, Santa Rosa. This same authority, speaking of Santa Rosa, on page 460, states it to be "A Papago village south of the Rio Gila and west of Tucson, Arizona."

It is further interesting to note in this connection that, in a report of the surveyor general made in 1861, in pursuance of the provisions of the act of Congress of July 22, 1854 (10 Stat. L., 308), he reports on all the Pueblos in New Mexico, including the territory added to New Mexico by virtue of the Gadsden treaty, and which new territory included the land of the Papagos. The surveyor general gives a list of forty-eight pueblos, and includes among them the pueblo of Santa Rosa, which appears as number forty-six on the list mentioned. Eleven such Papago pueblos are included, with a total population as of the year 1861, of 3,500 persons, and the list is prefaced as follows:

"Statement showing respectively the names of all the Indian pueblos in New Mexico, with their localities, population, wealth, etc. and the times when their land claims were confirmed by Congress and when surveyed, and the areas thereof."

This Papago territory of New Mexico subsequently formed a part of the Territory, later the State, of Arizona.

The Government, in its memorandum brief submitted on behalf of the motion under consideration, defines a pueblo as a village
18 or town, and the definition of pueblo given on page 318 of the "Handbook," from which extracts have already been quoted, is the same; and while the term seems generally to have been applied to designate Indians who lived, or are living, in permanent stone or adobe houses, built into compact villages, the "Handbook" states that these villages are found in Southern Colorado, Central Utah, New Mexico, Arizona, "and extended sometimes to include the settlements of such tribes as the Pima and the Papago, who led an agricultural life."

From the foregoing, it would seem that there has long existed in Arizona the pueblo of Santa Rosa, being a village or town whose inhabitants are a part of the Papago Tribe of Indians, and that pueblos of this character have long existed both in Arizona and in

New Mexico and were in existence prior to the acquisition of this territory by the United States and, so far as anything appears to the contrary, during the period of Mexican rule, and prior thereto during the Spanish rule. It may be true that the inhabitants of the pueblo of Santa Rosa are an agricultural people and have always been, but it does not follow from this that they have not had their town or village, tilling the land which stretched out and away from the town or village.

A consideration of the third and fourth grounds of the motion to dismiss requires a further analysis of the bill of complaint.

The bill alleges that from time immemorial, and since before the first explorations of the Spanish discoverers, and more than three hundred years prior to the institution of this suit, the plaintiff has owned, actually possessed and occupied a tract of land now situated in Pima County in the State of Arizona, containing an area of 720 square miles, more or less, and in and on which the village where the inhabitants of the plaintiff pueblo reside, exists. The land is described by metes and bounds, and it is alleged that during all of the period aforesaid it has been exclusively, actually occupied, and possessed by the plaintiff under open and notorious claim of right and absolute ownership; that said plaintiff and its inhabitants have, during all of said period, occupied and utilized all of said land for the purposes of agriculture and grazing, and have resided thereon; that the boundaries of said land as found in the description by metes and bounds given have, from time immemorial, been definitely fixed, known, and recognized; and the ownership, possession, use, and occupation of said land by the plaintiff and its inhabitants have always been coterminous with said boundaries; that Spain, during its period of sovereignty, and later Mexico, during its period of sovereignty over the territory including said land, always recognized and never disputed the ownership of the same by the plaintiff; and it is situated within the boundaries of the territory ceded by Mexico to the United States by the Gadsden purchase and treaty.

The bill alleges that at the time of the acquisition from Mexico of the territory in question the plaintiff was the absolute owner, with complete, perfect, and indefeasible title to said land, against all governments, individuals, and of the whole world, and since
19 the change of sovereignty from Mexico to the United States, this title and ownership has continued to exist, and now exists; and it is alleged that by the terms of the Gadsden treaty and of the treaty of Guadaloupe Hidalgo, the ownership of these lands by the plaintiff was forever guaranteed to it by the United States.

From the foregoing it will be seen that the bill nowhere alleges a purchase by, or a grant or deed to, the plaintiff of the land in question. The allegations show rather a title by possession and occupation for a period of several centuries, a possession and occupation which, it is alleged, was always recognized and never disputed during the long period of Spanish sovereignty and later during the

period of Mexican sovereignty and control. These are facts that are admitted by the motion to dismiss, though only for the purpose of the motion, and the question then arises whether this shows such a title in the plaintiff as entitles it to the aid of the Court in the manner sought by the bill.

The acts of the defendants complained of are, among others, that they are now offering for entry, as part of the public domain of the United States, all of the land hereinbefore described; that they have heretofore granted pretended patents to third persons, covering portions of said land and are threatening to issue other pretended patents to other parties of other portions of said land; that they have repeatedly trespassed upon said lands, and are threatening to continue such trespasses, and are threatening to enter upon said land and there to make surveys, under the claim that said lands are a portion of the public domain of the United States, and are the property of the United States and not of the plaintiff; and that they have caused to be published and circulated, and are now publishing and circulating, and threatening to continue to publish and circulate, maps purporting to be official maps of the Department of the Interior, showing said land as a part of the public domain of the United States and that these acts will throw a cloud upon the title of the plaintiff to said land, and will cause many persons to attempt to settle upon the land and enter the same in the Land Department of the United States, and that the plaintiff will be unable to remove such persons without a great multiplicity of suits; that pursuant to the Act of Congress of June 20, 1910, providing for the admission of Arizona as a State of the Union, the United States granted to said State more than 2,000,000 acres of land, which was to be selected under the direction and subject to the approval of the defendant Secretary of the Interior, from the public lands of the United States within the limits of said State by a commission of State officers; and that for the purpose of such selection the State might procure the survey of the United States public lands within said State, to be surveyed in the manner prescribed by the Act of Congress, approved August 18, 1894; and to procure such survey, and in order to make the said selection, the State of Arizona has applied to the defendant Commissioner of the General Land Office for the survey of certain lands in Arizona, including all of that belonging to the plaintiff; and that this application has been granted by the defendants, and for this purpose
20 authorized the Surveyor General of Arizona to immediately survey said land, and that said Surveyor General, acting under this authority, is now surveying, or is about to survey, all of the plaintiff's land for the purpose of enabling Arizona to select and appropriate to itself all or a part of said land. And there are other allegations, all of which with more or less particularity show that the United States, acting through the defendants, are treating the lands of the plaintiff as public domain and are disposing of it, or intending to dispose of it, in conformity with either general or special acts of Congress authorizing such disposition.

It is to be noted that the plaintiff has never sought to obtain a recognition of its title by the United States, although the opportunity to do so has been open to it by the provisions of the Act of Congress of July 22, 1854 (10 Stat. 308), and by the later act, creating the Court of Private Land Claims. (26 Stat. 854.) The plaintiff, however, claims that it was not required to do this, because the language of the act establishing the Court of Private Land Claims left it optional with those who claimed a perfect title of going into said court for the purpose of having such title confirmed, and this contention is sustained by the language of the United States Supreme Court in the case of Ainsa vs. New Mexico and Arizona Railroad Company, 175 U. S. 76; and Richardson vs. Amsa, 218 U. S. 289; and the plaintiff claims that its title to the claim has always been perfect.

But we have here a case of land claimed to be owned in fee simple by a village or town in its own corporate right. There is no ownership alleged in the inhabitants of this villake or town, they occupying the land in question in common as inhabitants. The title is claimed by the town, the pueblo, itself.

When the United States acquired sovereign power over the territory which includes this land, the town or village became subject to that sovereignty, and this plaintiff Pueblo at most could only claim that the United States had continued to recognize it as an agency of local government so long as it saw fit to do so. It cannot seriously be doubted that the United States at any time might have put an end to the political character of the plaintiff Pueblo, and when we consider the fact that the inhabitants of this Pueblo were, and are, Indians belonging to the Papago tribe, and when we remember the sweeping authority and control exercised by the United States over the Indians, and such authority frequently sustained by the highest tribunal in the land, no room to challenge its power any longer exists. Bernal et al. vs. Lynch et al., 36 Cal. 135, affirmed 9 Wallace 315; City of Monterey vs. Jacks 139 Cal. 542, affirmed 203 U. S. 360. Also Grisar vs. McDowell, 6 Wallace 363, 372. And this power the Court thinks extends over the lands claimed by the plaintiff Pueblo. The Court has no business to concern itself with the policy of the Government in exercising its power, if it exists. That it does exist with respect to the land claimed by an Indian Pueblo is clearly recognized in the case of United States vs. Sandoval,
21 231 U. S. 28. It is true that in that case the Court did not have before it a suit which directly involved a question of a claim to ownership in fee simple by a pueblo as against the United States. That case was a criminal prosecution for introducing intoxicating liquors into the Indian country, the Pueblo of Santa Clara, in the State of New Mexico. The prosecution had been instituted under an Act of Congress making it a punishable offense to introduce intoxicating liquors into the Indian country, and, by virtue of a later act, the New Mexico enabling act, Congress in terms defined land owned and occupied by Pueblo Indians as Indian country within the meaning of the Act prohibiting the introduction of intoxicating liquor

therein. In the course of its opinion, disposing of the contention thus made, the Court uses this language, page 48:

"It is also said that such legislation cannot be made to include the lands of the pueblos, because the Indians have a fee simple title. It is true that the Indians of each pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under Executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs. Stephens vs. Cherokee Nation, 174 U. S. 445, 488; Cherokee Nation v. Hitchcock, supra; Heckman v. United States, 224 U. S. 413; Gritts v. Fisher, id. 640; United States v. Wright, supra. Considering the reasons which underlie the authority of Congress to prohibit the introduction of liquor into the Indian country at all, it seems plain that this authority is sufficiently comprehensive to enable Congress to apply the prohibition to the lands of the pueblos."

While it does not appear that the Government has ever, until the events leading up to the institution of this suit, undertaken to exert any authority over the land particularly described in the bill of complaint as belonging to the plaintiff, the court takes judicial notice of the fact that with respect to other Papago Indian lands, it has quite frequently exerted its claimed authority and power. This has taken the form creating, by Executive orders, Indian reservations. A list of these submitted by counsel for the defendants is as follows:

No. 1. San Xavier Reservation. By President Grant, July 1, 1874. See Executive orders relating to Indian reservations from May 14, 1855, to July 1, 1912, Wash., Gov. Pt. Office, 1912, at p. 23.

No. 2. Gila Bend Reservation. By Pres. Arthur, Dec. 12, 1882. "Executive orders," etc., p. 14.

NOTE.—On June 17, 1909, Pres. Taft "restored to the public domain" Sec. 16 and Sections 19 to 36, of lands within this reservation.

Executive orders, etc., p. 14.

No. 3. Created by Pres. Taft, June 16, 1911, being a part of Sec. 7, township 21 S., range 6 E., Gila and Salt River meridian. Executive orders, etc., p. 23.

22 No. 4. Papago reservation, created June 16, 1911, by Pres. Taft, situate in township 17, range 5.

Executive orders etc., p. 23.

NOTE.—The description of Nos. 3 and 4, as given in "Executive orders," etc., were amended and modified by Executive Order No. 1655, dated December 5, 1912.

No. 5. Cockleburr, Tat-Mahmeli (or Tat-murl-ma-kot), and Chiu-Chiuschu (or Chur Chaw). Created May 28, 1912, by order of Pres. Taft.

Executive orders, etc., p. 24.

No. 6. Ah-Chin, etc. (Maricopa), created by order of Pres. Taft, May 28, 1912.

Executive orders, etc., p. 24.

No. 7. Reservation at Baboquivari, created by Pres. Taft Dec. 5, 1912.

Executive order No. 1655.

The power to establish such reservations has long been recognized by the courts, Grisar v. McDowell, 6 Wall. 363; and reservations thus established have been recognized by Congress in its enactments, 24 Stat. 388, sec 1; and in addition has granted a right of way to the Arizona Southern Railroad Company through one of the Papago Indian reservations thus established in Arizona, 22 Stat. 299; and a right of way to the Citrous Water Company across the Papago Indian Reservation in Maricopa County, Arizona, 25 Stat. 629. It has made appropriations in connection with such reservations, and in addition has appropriated money for the improvement and sinking of wells, etc., for eight Papago villages in Southern Arizona. This was done by an act of Congress approved August 1, 1914 (38 Stat. 583, 588, 594), and by this same act it appropriated $50,000.00 to furnish school facilities for the children of the Papago Tribe of Indians in Arizona, a part of which was stated by counsel for the defendants it is proposed to expend in the plaintiff village or town of Santa Rosa; and by the same act an appropriation was made for nomadic Papago Indians in Pima County, Arizona. The deficiency act of April 6, 1914 (38 Stat. 312, 332), contains an item for the nomadic Papago Indians of Arizona.

It thus is seen that the political departments of the Government have for a considerable period of time claimed and exercised power, authority, and control over the lands occupied by the Papago Indians.

In summing up the matter the case presented by the bill involves a claim of corporate existence on the part of the plaintiff that depends upon user of such corporate power and authority and not by virtue of a grant by any sovereign power whatsoever, unless it be in the rather vague allegations that the laws and customs of the Indians and the laws of Spain and of Mexico at all times "conceded" to the plaintiff the character, power, and authority claimed. Nowhere is there pointed out to the court a grant which has conferred corporate power, but the claim seems rather to be based upon the theory that because some of said laws and customs recognized the existence of pueblos of the kind that the plaintiff is alleged to be,
23 that therefore they have expressly recognized this particular plaintiff as such a pueblo.

As has been pointed out, no express grant of the land claimed by the plaintiff is alleged ever to have been made by Spain, Mexico, or the United States. It has never sought to obtain from the United States a recognition of its claim of title.

The inhabitants of the Pueblo probably do not exceed a few hundred in number. The permanent character of the town or village is at least doubtful when tested by what is clearly recognized as an Indian Pueblo, and it is claiming, under such circumstances, a fee simple title in absolute unrestricted ownership of 720 square miles of land, more or less, under a description by metes and bounds, whose beginning point is at least exceedingly vague, commencing, as it is alleged to do in the bill of complaint, "at a point or place known as Kabitque or Mountain Logia plain."

The Court is of the opinion that the suit thus instituted cannot be maintained. The motion to dismiss is granted, and an order will be signed accordingly.

F. L. SIDDONS, *Justice.*

April 11, 1916.

Decree.

Filed April 25, 1916.

* * * * * * *

This cause came on to be heard on defendants' motion to dismiss the bill of complaint and was argued by counsel; whereupon, on consideration thereof, the court being fully advised in the premises, it is, this 25th day of April, 1916,

Ordered, adjudged, and decreed, That the motion to dismiss be, and the same is hereby sustained, and that the bill of complaint herein filed, be, and the same hereby is, dismissed, with costs to the defendants to be taxed by the clerk.

By the court:

F. L. SIDDONS, *Justice.*

From the above decree an appeal is entered by the plaintiff in open Court to the Court of Appeals of the District of Columbia and the penalty of the bond is fixed at $100.00 or $50 cash deposit in lieu of bond.

F. L. SIDDONS, *Justice.*

Memorandum.

May 13, 1916.—$50 deposited by H. P. Blair for costs on appeal.

24 *Assignment of error.*

Filed June 15, 1916.

* * * * * * *

The Court erred in granting the motion of the defendants and dismissing the bill of complaint.

RALPH S. ROUNDS,
HENRY P. BLAIR,
Attorneys for Plaintiff.

Designation of Record.

Filed June 15, 1916.

* * * * * * *

The Clerk will please prepare the Transcript of Record of the Court of Appeals in the above entitled cause and include therein:

(1.) The bill of complaint.
(2.) Service and appearance of defendants.
(3.) Motion of defendants to dismiss bill.
(4.) Decree dismissing bill.
(5.) Opinion of the Court.
(6.) Noting of appeal and deposit for costs in lieu of bond.
(7.) Assignment of error.
(8.) Designation of record.

RALPH S. ROUNDS,
HENRY P. BLAIR,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 36, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33201 in Equity, wherein The Pueblo of Santa Rosa is Plaintiff and Franklin Knight Lane, Secretary of the Interior, et al. are defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of June, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2981. The Pueblo of Santa Rosa, appellant, vs. Franklin Knight Lane, &c., et al. Court of Appeals, District of Columbia. Filed June 24, 1916. Henry W. Hodges, Clerk.

25 Tuesday, March 6th, A. D. 1917.

* * * * *

THE PUEBLO OF SANTA ROSA, APPELLANT,

vs.

FRANKLIN KNIGHT LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office. } No. 2981.

The argument in the above entitled cause was commenced by Mr. Ralph S. Rounds, attorney for the appellant, and was continued by Mr. C. E. Wright, attorney for the appellees, and was concluded by Mr. Ralph S. Rounds, attorney for the appellant.

26 Court of Appeals of the District of Columbia.

THE PUEBLO OF SANTA ROSA, APPELLANT,

vs.

FRANKLIN KNIGHT LANE, SECRETARY OF THE INTERIOR, AND CLAY Tallman, Commissioner of the General Land Office, Appellees.

No. 2981.

Opinion.

Mr. Justice Van Orsdell delivered the opinion of the Court:

This is a suit in equity brought in the Supreme Court of the District of Columbia by plaintiff, the Pueblo of Santa Rosa, to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from undertaking in their official capacity to open its lands to sale, entry and settlement as public lands of the United States.

It is averred in the bill that plaintiff is, and from time immemorial has been, a town known by the common name of Pueblo of Santa Rosa, composed of civilized, sedentary, agricultural and pastorial inhabitants who are Pueblo Indians, and have been known as such, residing in permanent houses in a village of permanent location, built upon lands described in the bill, which are situated within the county of Pima, in the State of Arizona, which lands, it is averred, were granted and conceded to said pueblo "by the laws and customs of the Indians antedating the Spanish discovery of America and also by the laws of Spain and Mexico." These lands are part of the territory ceded to the United States by the Gadsden Treaty. It is also averred that the inhabitants of this pueblo have from time immemorial lived in communal life, and have governed themselves and their community accordingly, with definite laws and customs having

the force of law which have always been obeyed by the inhabitants, and that at stated intervals they assemble in common council composed of the adult male inhabitants of the pueblo and legislate on matters concerning the pueblo and its inhabitants by rules and decisions having the force of law.

It is also averred that "the laws and customs of the Indians and also the laws of Spain and of Mexico at all times conceded to the plaintiff, and the plaintiff claims and exercises, and from time immemorial has claimed and exercised, (1) the right to have a common name, to wit, the Pueblo of Santa Rosa, and (2) the right and power to take, hold, manage, control, and dispose of real and personal property, including the land upon which said village is situated and the surrounding lands, and (3) the right and power to contract and otherwise act as an entity by resolutions passed in common councils composed of its adult male inhabitants, and through its officers and representatives, in all matters concerning its interests, property and affairs, and (4) the right and power to have perpetual succession, and (5) the right and power to sue and be sued as an entity and to appear and act as such before courts and governmental authorities, and (6) the right and power to maintain a permanent town organization and government, and to make at common councils of its inhabitants, rules and laws binding upon the pueblo and its inhabitants, and to be controlled and managed by its inhabitants acting together according to law and according to rules so made, and to elect and keep in office captains, alcaldes and other town officers exercising much power and jurisdiction over said pueblo and its property and inhabitants for their common benefit and for the maintenance of order, the preservation of its property, the promotion of its interests and the conduct of its affairs. By reason of the facts above mentioned the plaintiff is and from time immemorial has been, under the laws of Spain and Mexico and of the United States, an entity in fact and in law and a juridical person entitled to sue as such."

It is also averred that the plaintiff occupies the same position and status as the Pueblo Indian towns of Mexico existing at the time of the Spanish discovery of America, and that "Spain during all the period of its sovereignty over the territory including the land herein described at all times recognized and in no instance disputed the ownership of said lands by the Pueblo of Santa Rosa and by repeated royal orders and decrees, recognized the Papago Indians and the inhabitants of said pueblo as free vassals of the Spanish
27 crown, entitled to all the protection in their property rights which was accorded to Spanish subjects, and recognized and confirmed the ownership of plaintiff in said lands;" that, after the establishment of its sovereignty, Mexico recognized plaintiff's ownership of the land described and during the period of Mexican sovereignty the inhabitants of the Pueblo of Santa Rosa were recognized as Mexican citizens, enjoying property rights and other rights

accorded to citizens of Mexico; that "at the time of the acquisition from Mexico by the United States of sovereignty over the territory comprising said land and at the time of the making of said treaties the said Pueblo of Santa Rosa was the absolute owner with complete, perfect and indefeasible title to the land herein described against all governments and individuals and all the world, except such rights as pertained to the inhabitants of said pueblo as members thereof, and since said change of sovereignty this perfect title and ownership has continued to exist and now exists. The inhabitants of said Pueblo of Santa Rosa ever since said change of sovereignty have been and now are actually in possession, use and occupation of all of said land except in so far as recently they have been wrongfully disturbed in said use and occupation by trespassers without color of right or title;" and that, "by the terms of the treaties hereinabove mentioned, the ownership of its lands by said Pueblo of Santa Rosa was forever guaranteed and secured to it by the United States."

It is also averred that in 1909 the then Secretary of the Interior designated plaintiff's lands as subject to entry under the Enlarged Homestead Act of February 19, 1909; that in 1914 plaintiff petitioned defendant Secretary setting forth its grievances, and prayed that he and his agents "should abstain from listing for entry or sale as part of the public domain of the United States any part of said parcel of land belonging to the plaintiff and from recommending the issuance of any patents covering any part of said land and from surveying or making allotment surveys within the boundaries thereof." The Secretary, on June 11, 1914, replied, denying plaintiff relief, "stating, among other things that if the tenure of the holding of the Indians is not by grant emanating from the Government of Spain or Mexico it is not such a property right as was provided for and protected by the treaty, and that the mere possession of the land as Indian country with the right of use, did not prevent it from passing under the dominion of the United States as public land, whatever the obligation of the United States to the Indians might be and that no claim was presented by the Indians with reference to the lands in question to the surveyor general of Arizona under the act of July 15, 1870, and that by the act of March 3, 1891, a Court of Private Land Claims was created for the adjudication of all private land claims in Arizona and that no claim appeared to have been presented to said court by the Indians, although it is provided by section 12 of said act that any claim not presented to such court within two years from the date of the act shall be deemed to be abandoned and shall be forever barred and that said court having expired by limitation of law on June 30, 1904, any claim that the Indians may have can now be confirmed only by an act of Congress."

The prayer in broad terms is that defendants be restrained from treating the land as part of the public domain and exercising authority over it as such.

Defendants moved to dismiss the bill on the grounds that plaintiff is incapable of bringing or maintaining this suit, because not a body corporate; that it does not own the lands, but merely occupies them by sufferance as part of the public domain ceded to the United States by the Republic of Mexico as part of the Gadsden Purchase; that this, therefore, is a suit against the United States, and that the bill seeks to control the discretionary action of defendants.

From the decree sustaining the motion to dismiss this appeal was taken.

The history and character of the Papago Indians may be gathered from a reference to certain public documents. In 1865 the first superintendent of Indians for Arizona states that "the early Spanish explorer found the Papagos here in 1540, and ruined houses of grand proportions attest their occupancy for thousands of years before the Spaniards came." Ex. Doc., 2d Sess., 38th Cong., Vol. 5, Rep. Sec. of Int., p. 296.

In 1856 the Indian Commissioner, in a report to Congress, said: "The Pueblo Indians maintain their character as peaceable, industrious communities. Some of them have lost the title-papers for the grants of land obtained by them from Spain and Mexico. In such cases their agent has taken testimony in their behalf. They deserve the fostering care of the Government, and Congress will no doubt confirm their titles. About five thousand Indians are embraced within the Gadsden Purchase. They are mostly Pueblos, and reside in six different villages. They have houses and flocks, and raise wheat and other products of the soil." Rep. Sec. of Int., Sen. Doc., 3rd Sess., 34th Cong., Vol. 2.

In the report of the Commissioner of Indian Affairs of 1856, at page 183, the following statement appears: "A large portion of this acquisition to our Indian population consist of Pueblos situated near Tucson. * * * They reside in permanent villages, have comfortable houses built of adobes, have flocks and herds around them, and rely upon the cultivation of the soil for subsistence, raising wheat, corn, cotton, and other vegetables. They are divided into six pueblos or villages, but whether or not they hold their lands under grants from the former Governments of their country I am not informed, but presume they do, as they have been permanently settled for a great number of years."

M. C. Davidson, Indian agent, at page 131 of the Report on Indian Affairs for 1865, said: "The status of the Papagos with respect to the soil ought to be determined in a way that no injustice will be done to them. The Mexican laws, based upon the laws of the Indians promulgated by the kings of Spain, recognized the Indians as subjects or citizens, and in most cases confirmed to them wherever they resided in fixed communities, the titles to the lands where they lived. The Spaniards never made treaties with the Indians nor extinguished the titles to the land, nor did they in any way recognize them as independent nations. Those who now, by the transfer of the

political sovereignty of the country, find themselves upon American soil and surrounded by Americans, look for at least a measure
28 of recognition of their rights equal to that which they enjoyed under the despotic government of Spain. In my opinion, we must regard them as American citizens, and under certain conditions entitled to all their privileges." Rep. Sec. of Int., 1865, p. 299, Ex. Doc., 39th Cong., Vol. 2.

It is conceded, as indeed it must be from a study of Spanish and Mexican history, that plaintiff pueblo has continuously occupied the Valley of Santa Rosa from time immemorial. This logically brings us to a consideration of its legal status. We find that, under both Spanish and Mexican laws, extending from the Spanish invasion down to the cession to the United States, all Indian pueblos were accorded large legal and political privileges, with the power of having municipal self-governments and of choosing local officers with due relation to their responsibility to the public, and the power to hold property and to appear in court and sue and defend on their own behalfs. Each pueblo held title to its land in common, and in general its political and legal status was that of a juridical entity. Indeed, after the Mexican succession, they were elevated to citizenship and civil rights. Hall's Mexican Laws, sec. 161.

The Laws of the Indies, which were begun by decree of Charles V in 1543, and extended by subsequent decrees of the Spanish kings, contain much in recognition of the right of Indian pueblos to their lands in Mexico. In Book IV, Title 12, Law 14 (1578), it is said: "Because we have wholly succeeded to the lordship of the Indies and because the public lands not granted away by the kings, our predecessors, or by us in our opinion belong to our patrimony and royal crown, it is suitable that all the land which is held in possession without just and true titles shall be restored to us as it belongs to us so that, reserving before everything that which to us or our viceroys, courts, or governors may appear necessary for plazas, commons, public lands, pastures, and territory of the inhabited villages and towns in view of their present condition as well as of the future and their possible expansion, and granting to the Indians that of which they may reasonably have need for working the land and making their crops and for their education, confirming them in that which they now have and giving to them in addition that which is necessary, all the rest of the lands may remain and be free and unencumbered to be disposed of according to our will. Wherefore we order and direct the viceroys and presidents of the pretorial courts that when it appears proper to them they shall announce a suitable limit of time in order that those in possession may exhibit before them and the officers of their courts which may name the titles of the lands, plantations, farms, stock farms, protecting those who are in possession with good title and guaranties or with just prescription and they shall return and restore to us the remaining land to be disposed of according to our will."

Further quotation from the same laws confirm the Indians in respect to their titles. "We order that the sale, cultivation and adjustment of lands shall be made with such precautions that to the Indians shall be left the lands which may belong to them, not only as individuals, but also as communities." Book IV, Title 12, Law 18 (1642). "No one shall be allowed to enter into a composition of lands unless he has possessed them for ten years, even though he may allege that he has so possessed them, because this pretext alone must not be sufficient, and the communities of Indians shall be admitted to composition in preference to the other particular persons, granting to them every convenience." Book IV, Title 12, Law 19 (1646). "It is just that the Indians shall have time to work their properties and those of the community and that the viceroys and governors shall proclaim that which may be necessary, to the end that they can come to their farms." Book VI, Title 1, Law 23 (1609).

By the Laws of the Indies, comprehensive provision was made, not only confirming title to lands held by the Indians individually and in common, but establishing regulations for their better government and especially for the protection of their property rights, with ample provision for access to the courts.

By a royal decree of October 15, 1754, respecting public lands which forms the basis of many Mexican titles, the following instructions were promulgated: "The judges and officers in whom is delegated the jurisdiction over the same and composition of crown lands shall act with lenity, forbearance and moderation, with verbal and not judicial process, in questions of lands possessed by Indians, and of other lands which they (Indians) may need, especially for their work, cultivation, and stock raising; since in regard to lands of communities and those granted to their pueblos for pastures and common lands, nothing new must be done, maintaining them in possession thereof and restoring to them those that have been taken from them and giving them more land as the exigencies of the population require, and using no rigor in regard to those held by the Spaniards and people of other castes, keeping in mind the provisions of laws 14, 15, 17, 18, and 19, title 12, Book IV, of the Compilation of the Indies." The decree also provided that, in the absence of title papers, "it shall be sufficient to prove ancient possession as a title by just prescription." 1 Legislacion Mexicana, Mexico, 1876, pp. 13, 14.

The failure to aver the present existence of title in plaintiff pueblo by deed or other writing is not controlling, since its inhabitants have occupied and used the lands in question from time immemorial and their title had been expressly recognized and confirmed by the Spanish and Mexican governments. Referring to the character and validity of the title of the Indian pueblos within the territory ceded by Mexico, the court, in United States v. Pico, 5 Wall., 536, 540, said: "The existence of the pueblo and the assignment to it of the land in question by the officers of the Mexican Government are fully established by the documentary evidence in the case. The objection

of the appellants is founded upon the absence of any transfer of the title to the pueblo by deed or other writing. But such transfer was not essential, nor was it usual. A pueblo once formed and officially recognized became entitled, under the laws of Mexico, to the use of certain lands, for its benefit and the benefit of its inhabitants, and the lands were, upon petition, set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given."

29 That the inhabitants of the Pueblo of Santa Rosa were citizens of Mexico at the time of the cession to the United States seems to be indisputably established. The question of the status of Indian citizenship in Mexico prior to the cession is exhaustively reviewed in the case of United States v. Ritchie, 17 How., 524. The court, speaking of the power of Indians under the Government of Mexico to take and hold property, said: "In answer to the first objection, we are referred to the plan of Iguala, adopted by the revolutionary government of Mexico, 24th February, 1821, a short time previous to the subversion of the Spanish power in that country, in which it is declared that 'all the inhabitants of New Spain, without distinction, whether Europeans, Africans, or Indians, are citizens of this monarchy, with a right to be employed in any post according to their merit and virtues;' and that, 'person and property of every citizen will be respected and protected by the government.' . . . The Indian race having participated largely in the struggle resulting in the overthrow of the Spanish power, and in the erection of an independent government, it was natural that in laying the foundations of the new government, the previous political and social distinctions in favor of the European or Spanish blood should be abolished, and equality of rights and privileges established. Hence the article to this effect in the plan of Iguala, and the decree of the first congress declaring the equality of civil rights, whatever may be their race or country. These solemn declarations of the political power of the government had the effect, necessarily, to invest the Indians with the privileges of citizenship as effectually as had the declaration of independence of the United States, of 1776, to invest all those persons with these privileges residing in the country at the time, and who adhered to the interests of the colonies. 3 Pet., 99, 121. . . . But as a race, we think it impossible to deny, that, under the constitution and laws of the country, no distinction was made as to the rights of citizenship, and the privileges belonging to it, betwen this and the European or Spanish blood. Equality between them, as we have seen, has been repeatedly affirmed in the most solemn acts of the government."

Concluding, as we must, that the inhabitants of the Pueblo of Santa Rosa were citizens of Mexico and possessed of a valid communal title in the lands embraced therein, we come to a consideration of the effect, if any, the transfer of sovereignty to the United States had upon those rights. By Article IX of the Treaty of Guadalupe

Hidalgo, it was provided that "The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, . . . shall be incorporated into the union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

The Gadsden Treaty, under which the Pueblo of Santa Rosa and its inhabitants passed from the sovereignty of Mexico to the United States, provides: "Art. V. All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth."

It may be suggested that the foregoing treaty provisions are merely declaratory of the general principles of international law, preserving, in case of change of sovereignty by cession, all the personal and property rights of the inhabitants of the ceded territory. Whatever rights were secured to plaintiff by Mexico prior to cession passed and are granted protection by the new sovereignty. Title respected by treaty obligations is peculiarly sacred. It rests not only on the pledge of protection by the new sovereignty, but upon a solemn guaranty to the old sovereignty that existing personal and property rights shall remain undisturbed. "The rights of private property, so far from having been impaired by the change of sovereignty and jurisdiction, were fully secured by the law of nations, as well as by treaty stipulation." Newhall v. Sanger, 92 U. S., 761, 763.

It will be observed that the treaty of Guadalupe Hidalgo protected all persons, corporations and communities in their rights of property. This included pueblos which, by law and custom, had become vested with interests in lands under the former government. It expressly provided for the protection of the rights of the inhabitants of the ceded territory in their persons and property, and there is nothing from which the inference can be adduced that any distinction was intended with reference to property claimed by towns under the Mexican Government. "By the laws of Mexico, in force at the date of the acquisition of the country, pueblos or towns were entitled, for their benefit and the benefit of their inhabitants, to the use of lands constituting the site of such pueblos and towns, and all adjoining lands, within certain prescribed limits. This right appears to have been common to the cities and towns of Spain from an early period in her history, and was recognized in the laws and ordinances for the settlement and government of her colonies on this continent. These laws and ordinances provided for the assignment to the pueblos or

towns, when once established and officially recognized, for their use and the use of their inhabitants, of four square leagues of land. It may be difficult to state with precision the exact nature of the right or title which the pueblos held in these lands. It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted in truth to little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation and to use the remainder for commons, for pasture-lands, or as a source of revenue, or for other public purposes. This right of disposition and use was, in all particulars, subject to the control of the government of the country." Townsend v. Greeley, 5 Wall., 326, 336.

It logically follows that there existed, and still exists, in these pueblos a communal right of property which, at most, could only be controlled by specific act of the government itself. It is inconceivable, however, that this controlling power of the government should extend beyond the exercise of the functions of guardianship, for their title to the lands antedates the sovereignty of the United States, and is expressly protected and confirmed by treaty. By no rule of sovereign prerogative existing in our form of constitutional government could these people be divested of their lands without due compensation. Congress has never legislated in respect of the property rights of plaintiff pueblo. Until it does, its administrative officers are without authority to interfere in any respect with those rights. It will not do so say that authority exists under the general legislation of Congress with respect to the Indians and the Indian country. It has never been the policy to so treat the Indian pueblos which came to us with the cession from Mexico. The title to most of them has been confirmed by Congress under a policy entirely foreign to that adopted in dealing with the savage, nomadic Indian tribes. The laws of Spain, and later of Mexico, made no distinction between the Papago Indian pueblos and those within the present limits of the State of New Mexico which have been confirmed in their rights which were recognized by this Government to have been acquired long prior to the transfer of sovereignty from Mexico to the United States.

It follows that by the obligations of the treaty of cession we stipulated not only to protect these former citizens of Mexico in their persons and property, but to accord to them the same treatment with respect thereto as had been accorded them under the former sovereignty. To deprive them now of their lands would be to deprive them of property rights of which they have been vested from time immemorial and which were recognized as such by both Spain and Mexico, and so recognized by this Government in respect of numerous other Indian pueblos similarly situated.

It is no argument that because recently Congress has made certain provisions looking to the exercise of limited guardianship over these people that the administrative officers of the Government may, upon

the theory that they are wards of the Government, treat their lands as public domain and open them to settlement. There is nothing inconsistent with the theory that an Indian, though a ward of the Government, may possess title to lands. The acts of guardianship in this instance place no power in the administrative officers of the Government to interfere in any manner with the property of the ward further than to manage and control it for the benefit of the ward. "As before indicated, by an uniform course of action beginning as early as 1854 and continued up to the present time, the legislative and executive branches of the Government have regarded and treated the pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes, and, considering their Indian lineage, isolated and communal life, primitive customs, and limited civilization, this assertion of guardianship over them can not be said to be arbitrary but must be regarded as both authorized and controlling." United States v. Sandoval, 231 U. S., 28, 47.

Even assuming that general acts of Congress relating to the guardianship of the Indians might apply to plaintiff pueblo, it would still hardly be contended that power exists in the officers of the Government to arbitrarily divest them of their lands. Even the savage, nomadic tribes of American Indians, with whom the ancient Mexican Pueblo Indians seem to have little or no racial connection, have been held to possess such a title or interest in their lands as could only be divested by treaty or act of Congress, and then only upon due compensation. No treaty or act of Congress exists or ever has existed touching the status of these Indians in respect of their title to the lands possessed, used and occupied by them from time immemorial.

While in the Sandoval case, the court distinguished the decision in United States v. Joseph, 94 U. S., 614, we assume it related only to the question under consideration of the power of Congress to prohibit the introduction of intoxicating liquor into an Indian pueblo, holding it to be Indian country. This, we conceive, detracts nothing from the authority of the Joseph decision as fixing the distinction between the titles to lands held by Pueblo Indians and those occupied by the nomadic tribes. On this point Mr. Justice Miller, speaking for the court, said: "Turning our attention to the tenure by which these communities (Pueblo Indians) held the land on which the settlement of defendant was made, we find that it is wholly different from that of the Indian tribes to whom the act of Congress applies. The United States have not recognized in these latter any other than a passing title with right of use, until by treaty or otherwise that right is extinguished. And the ultimate title has been always held to be in the United States, with no right in the Indians to transfer it, or even their possession, without consent of the Government. It is this fixed claim of dominion which lies at the foundation of the act forbidding the white man to make settlement on the lands occupied by an Indian tribe. The Pueblo Indians, on the contrary, hold their lands by a

right superior to that of the United States. Their title dates back to grants made by the Government of Spain before the Mexican Revolution—a title which was fully recognized by the Mexican Government, and protected by it in the treaty of Guadalupe Hidalgo, by which this country and the allegiance of its inhabitants were transferred to the United States."

But it is urged that plaintiff pueblo is not a corporation, and, therefore, not entitled to maintain this action. Passing over much interesting history tending to establish its corporate entity by immemorial prescription, we think it is a corporation under the laws of the State of Arizona. When General Kearney was military governor of New Mexico, a statute entitled "An Act to Enable Pueblo Indians to Bring and Defend Actions" was passed, in which it was provided "That the inhabitants within the Territory of New Mexico, known by the name of the Pueblo Indians, and living in towns or villages, built on lands granted to such Indians by the laws of Spain or Mexico, and conceding to such inhabitants certain lands and privileges, to be used for the common benefit, are severally hereby created and constituted, bodies politic and corporate, and shall be known in law by the name of the 'Pueblo de ———' (naming it), and by
31 that name they and their successors shall have perpetual succession, sue and be sued, plead and be impleaded, bring and defend in any court of law or equity all such actions, pleas, and matters whatsoever proper to recover, protect, reclaim, demand, or assert the right of such inhabitants or any individual thereof to any lands, tenements, or hereditaments, possessed, occupied, or claimed contrary to law by any person whatsoever, and to bring and defend all such actions, and to resist any encroachment, claim, or trespass made upon such lands, tenements, or hereditaments belonging to said inhabitants or to any individual." Laws of New Mexico, 1851–1852.

In 1850 New Mexico was created a Territory (9 Stats. L., 446), by which general legislative authority was vested in the Territorial Legislature. The first legislature enacted "That all laws that have previously been in force in this Territory that are not repugnant to, or inconsistent with, the Constitution of the United States, the organic law of the Territory, or any act passed at the present session of the legislative assembly, shall be and continue in force, except in Kearney's Code the law concerning registers of land." Laws of New Mexico of 1852.

This brought the Kearney Act forward into the laws of New Mexico. The Papago Indian lands here in question were included in the Gadsden Purchase of 1854 and Congress, by act of August 4, 1854 (10 Stats. L., 575), enacted "That, until otherwise provided by law, the territory acquired under the late treaty with Mexico, commonly known as the Gadsden treaty, be, and the same is hereby incorporated within the Territory of 'New Mexico,' subject to all the laws of said last-named Territory."

By the act of Congress of February 24, 1863 (12 Stats. L., 664), the Territory of Arizona was created out of territory formerly embraced within New Mexico. The act continued in force the act creating the Territory of New Mexico, "together with all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act," which "are hereby extended to and continued in force in the said Territory of Arizona until repealed or amended by future legislation." We have been unable to find anything in the constitution or laws of Arizona repealing or in any manner affecting the corporate status of Indian pueblos as fixed by the Kearney statute. The validity of the Kearney Act was upheld in Leitensdorfer *v.* Webb, 20 How., 176.

Nor is this a suit against the United States to control the discretionary functions of its officials. This is not public domain of the United States in that it comes within the general acts of Congress imposing upon the Secretary of the Interior general-supervisory control over the public lands. It is an Indian pueblo of the class of the New Mexican pueblos in which the Government has recognized and confirmed title existing at the date of cession and protected by the treaty. Indeed, the only act of Congress that has been called to our attention affecting directly the title of Papago lands was in effect a recognition of their title. The act of 1882 (22 Stats. L., 299), granted a right of way to the Arizona Southern Railroad Company across the Papago Reservation, but specifically provided "That the consent of the Indians occupying said reservation be first obtained, and such compensation as may be fixed by the Secretary of the Interior be paid to him by the said railroad company, to be expended by him for the benefit of the said Indians." The act is significant of guardianship, but negatives any disposition on the part of the Government to assert ownership. No question of the boundary is here involved, since the boundaries set forth in the bill are concededly correct under the admissions of the motion to dismiss. Hence, defendant officers are acting totally without their jurisdiction. In such cases the courts will not hesitate to interfere. Gauthier v. Morrison, 232 U. S., 452; Lane v. Wade, 234 U. S., 525.

We come now to the claim of counsel for the Government that plaintiff is barred by its failure to assert its title before the Court of Private Land Claims or before the Land Commission created by the act of Congress of July 22, 1854 (10 Stats. L., 308). The act of 1854 was limited to Mexican land grants within the limits of California. It contained a provision for the absolute forfeiture to the United States of lands claimed if the grantee failed to present his claim to the commission before a specified date. This forfeiture provision was held valid and enforceable. Botiller v. Dominguez, 130 U. S., 238; Barker v. Harvey, 181 U. S., 481. But this law has no present application, since the lands in question are not situated in California and hence were not within the jurisdiction of the commission.

The act of March 3, 1891 (26 Stats. L., 854), creating the Court of Private Land Claims provided, among other things:

"Sec. 6. That it shall and may be lawful for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the Republic of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming, by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaty of cession of said country by Mexico to the United States which at the date of the passage of this act have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court," etc.

"Sec. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned."

It will be observed that it was left optional with persons claiming complete title to come into the Court of Private Land Claims. No penalty or forfeiture was imposed upon such claimant for failure to submit himself to the jurisdiction of the court. In Ainsa v. 32 New Mexico & Arizona Railroad, 175 U. S., 76, it was held that Mexican or Spanish grants complete at the time of cession were confirmed by the treaty itself and needed no confirmation by Congress. The reason for making the presentation of completed claims optional was stated in Richardson v. Ainsa, 218 U. S., 289, as follows: "But considerations mentioned in the case cited (Botiller v. Dominguez) did not prevent the United States in the act of March 3, 1891, from leaving the holders of perfected titles free not to present them to the court as they were required to do in earlier statutes. The good faith of the United States was pledged to respect the Mexican titles. It recognized in the act of 1891 that holders of such titles need not go into the Land Claims Court to get them confirmed, and we should be slow to suppose that it meant to make a doubt in the Department of Justice as to the validity of a perfect title a ground for cutting down what otherwise it was bound to protect and did by the statute leave intact."

With this distinction before us it is clear that plaintiff lost nothing by failure to assert its title before the Land Claims Court. What-

ever title plaintiff has it acquired long prior to the cession from Mexico. Its status was in no respect affected by the change of sovereignty. Nor, as we have observed, has it been changed by act of Congress. Its communal pueblo or village title was as little subject to impairment by change of sovereignty as that of a private individual Spanish or Mexican grantee. The court below laid stress upon the principle that plaintiff, being a pueblo or village, a mere agency of the Government, it lay within the sovereign power at any time to put an end to its political character or existence. But this is an assumption without a premise. No such thing has been attempted; and, so long as the pueblo continues, its property rights remain subject to protection by the laws of the land, with a duty of enforcement resting upon the courts. Indeed, its peculiar origin, antedating every national sovereignty under which it has existed, may well distinguish it from the ordinary municipality with authority to exercise only those limited powers conferred by the express terms of a corporate charter granted by the State. It is more in the nature of a corporation by immemorial prescription recognized by the State, but exercising governmental functions of its own, independent of any express statutory regulations prescribed by the State.

It is unnecessary, however, to consider the more difficult question of the extent of the power of Congress to control plaintiff's title or abolish its corporate existence by legislative enactment, since it has not been attempted. The Land Department fell into error in placing the Papagos in the same classification with the original nomadic North American Indian tribes and attempting to apply to their property the general law affecting Indian lands and property. We find plaintiff, at the time of the cession from Mexico, to be a pueblo of the same legal status as the New Mexican pueblos whose title was recognized and confirmed in fee simple by the act of Congress of December 22, 1858 (11 Stats. L., 374). It follows, therefore, that whatever power Congress may have to control plaintiff's land, no such power has been asserted, and this power can not be assumed by the Land Department to the extent of opening the land to settlement and disposing of mineral rights therein.

The decree is reversed with costs, and the cause is remanded with directions to enter a decree restraining defendants from offering for entry or listing for entry or sale as part of the public domain of the United States any of said lands under any land or mineral land law of the United States and requiring, in so far as lies within their power or control, the correction of the records of the Land Department to prevent, in as large degree as possible, any further infringement upon the property rights of plaintiff.

Reversed and remanded.

33 Friday, April 27th, A. D. 1917.

* * * * * * *

THE PUEBLO OF SANTA ROSA, APPELLANT, vs. FRANKLIN KNIGHT LANE, SECRETARY of the Interior, and Clay Tallman, Commissioner of the General Land Office.	No. 2981.	April Term, 1917.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs; and that this cause be and the same is hereby remanded to the said Supreme Court with directions to enter a decree restraining defendants from offering for entry or listing for entry or sale as part of the public domain of the United States any of said lands under any land or mineral land law of the United States, and requiring, in so far as lies within their power or control, the correction of the records of the Land Department to prevent in as large degree as possible any further infringement upon the property rights of plaintiff.

per Mr. Justice Van Orsdel,
April 27, 1917.

34 In the Court of Appeals of the District of Columbia.

PUEBLO OF SANTA ROSA, APPELLANT, vs. FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, AND Clay Tallman, Commissioner of the General Land Office.	No. 2981.

Petition for allowance of appeal.

Come now Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, appellees in the above-entitled cause, by their attorneys, and show that on or about the 27th day of April, 1917, the court entered a judgment herein in favor of the appellant and against the appellees, reversing a decree of the Supreme Court of the District of Columbia in favor of the appellees, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellees, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellees further show that the said judgment of this court is subjected to reveiw by the Supreme Court of the United States under the provisions of the first paragraph of Section 250 of the Judicial Code in that the jurisdiction of the trial court to review or to control any or all actions complained of in the bill of complaint is in issue.

The appellees further show that the said judgment is subject to review by the Supreme Court of the United States under the provisions of the third paragraph of said section 250 in that the construction of certain treaties entered into under the authority
35 of the United States, to wit, the treaties of Guadalupe Hidalgo and Mesilla, are drawn in question.

The appellees further show that the said judgment is subject to review by the Supreme Court of the United States under the provisions of the fifth paragraph of section 250, in that the validity of an authority exercised under the United States and the existence and scope of a power or duty of the appellees, said appellees being officers of the United States, are drawn in question.

They further show that said judgment is subject to review by the Supreme Court of the United States under the provisions of the sixth paragraph of said section 250 in that the proper construction of certain acts of Congress, to wit, the Act of July 22, 1854, (10 Stat., 308) and the Act of March 3, 1891 (26 Stat., 854), is drawn in question by the appellees, who were defendants below.

Wherefore they pray the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of; that a transcript of the record, proceedings, and papers in the case, duly authenticated may be sent to the Supreme Court of the United States; and that the mandate of this court may be stayed until further orders.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

36 In the Court of Appeals of the District of Columbia.

PUEBLO OF SANTA ROSA, APPELLANTS,
v.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commisioner of the General Land Office. } No. 2981.

Assignment of errors.

Come now the appellees in the above-entitled cause, by their attorneys, and say that in the record and proceedings of the Court of Appeals, and in the rendition of their final judgment therein, manifest error has intervened to the prejudice of said appellees, in this to wit:

1. That the court erred in reversing the decree of the Supreme Court of the District of Columbia in favor of the appellees and against the appellant, and in remanding the case with directions to enter a decree restraining the appellees from offering for entry or listing for entry or sale as part of the public domain of the United States any of the lands in controversy under any land or mineral law of the United States as requiring the correction of records of the Land Department as outlined in the concluding paragraph of the opinion of said court.

2. That the court erred in not affirming the decre of the Supreme Court of the District of Columbia dismissing appellant's bill.

3. That the court erred in ruling and holding that the appellant possessed legal title of any character under the laws of Spain or Mexico to the lands in controversy, and was seized of the same at the time when the sovereignty of Mexico was surrendered and

37 transferred to the United States.

4. That the court erred, in arriving at such conclusion, in considering certain alleged foreign laws and decrees neither exhibited in the pleadings nor shown in evidence by the appellant.

5. That the court erred in holding that the appellant had a perfect legal title to the land at the time of the making of the treaty of Mesilla.

6. That the court erred in failing to hold that whatever title or property right to the land in question held by the Papago Indians located at Santa Rosa, under Spanish or Mexican law or custom, was imperfect and inchoate, and required, under the terms of the treaties of Guadaloupe Hidalgo and Mesilla, action, adjudication, and confirmation under laws of the United States made with reference to such claims.

7. That the court erred in failing to rule that a proper construction of either or both said treaties required an adjudication or confirmation of any title to lands transferred to the sovereignty of the United States where said titles were not complete and fully established by record.

8. That the court erred in holding and deciding that the act of July 22, 1854 (10 Stat., 308), was confined in its operations to land

situate within the State of California and did not relate to lands situate within the then territory of New Mexico.

9. That the court erred in holding and deciding that the claim of the appellant was not one of a character which it was obliged to submit to the Court of Private Land Claims under the act of March 3, 1891.

10. That the court erred in confusing the status of the appellant with that of the Pueblo Indians of New Mexico, whose grants were adjudicated and confirmed under the provisions of the act of July 22, 1854, and ultimately patented to the several pueblos by the United States, whereas the bill fails to show that the Papagos of Santa Rosa ever had a grant of land from Spain or Mexico, or ever solicited
38 or procured an adjudication by the Surveyor General of New Mexico, acting under said act of July 22, 1854, of the legality or validity of such claim, or ever secured the confirmation of such claim by Congress, or procured a patent for said land from the United States.

11. That the court erred in construing the treaties of Guadaloupe Hidalgo and Mesilla as obligating the United States in effect to treat and regard the lands occupied by the Papagos at Santa Rosa as possessed by them in common in fee simple.

12. That the court erred in failing to hold and decide that whatever right said Indians have in respect of the lands in controversy is an occupancy right, the ultimate title in fee to the said lands being in the United States.

13. That the court erred in failing to hold and decide that the appellees, acting under general authority of Congress conferred, are charged with the general guardianship of said Indians and with the care and control of the lands occupied by them.

14. That the court erred in ruling and holding that the appellant possesses legal entity with capacity as the "Pueblo of Santa Rosa" to begin or maintain, in such name, this or any suit in any court.

15. That the court erred in ruling and holding that the appellant was and is a corporation by virtue of the so-called Kearney Act.

16. That the court erred in failing to recognize and respect the paramount authority of the President of the United States exercised in his Executive order of January 14, 1916, setting aside the land in controversy as well as other lands as a reservation for the benefit of the Papago tribe of Indians.

17. That the court erred in ordering and directing, in the demanding of the case, the entering of a final decree restraining appellees from the performance of certain acts enumerated in the concluding paragraph of the opinion when, as in the opinion elsewhere appears, the case was before said court of appeals on an appeal from a
39 decree sustaining the demurrer (or motion to dismiss) of the appellees and dismissing the appellant's bill; whereas, under the rules of the Supreme Court of the District of Columbia and under practice obtaining in the courts of the United States, the appellees have a right to file answer to the bill if the sufficiency of

a demurrer (or motion to dismiss) is not sustained; and wherefore, by the judgment of the court of appeals aforesaid, the appellees are deprived of a substantial right—the right to plead over by answer to the bill of complaint in a suit where, if opportunity were afforded or required, every material allegation of fact in the bill of complaint would be denied.

18. That the court erred in failing to rule and to decide that the fee simple to land in controversy was transferred by the Republic of Mexico to the United States, under the treaty of Mesilla, subject to no more, if at all, than a mere occupancy right in the Indians; but that as to any question as to whether appellant has a title superior to that of the United States—that is to say, the legal title in fee simple acquired prior to the transfer of sovereignty from the Republic of Mexico to the United States—the United States is a necessary party to any suit wherein such title is asserted.

19. That the court erred in not affirming the decree of the Supreme Court of the District on the ground, if on no other ground, that this suit is essentially one against the United States, which is not a party to the suit and has not, in respect to any matter hereof, consented to be sued, but, on the contrary, has, through its Chief Executive and through its Congress since, as well as before, the institution of this suit, asserted rights in and power over the appellant and the land in controversy, in denial of any such title to the land as appellant asserts and as the said court of appeals, in the decision complained of, upholds.

Wherefore the appellees pray that for the errors aforesaid and other errors appearing in the record of said court of appeals the said judgment of said court may be reversed, annulled, and for naught esteemed, and that said cause be remanded with instructions to affirm the decree of the Supreme Court of the District of Columbia in said suit rendered or for such further proceedings in said suit in recognition and in protection of the rights of the appellees as may be determined by the Supreme Court of the United States to the end that justice may be done in the premises.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

(Endorsed:) No. 2981. Pueblo of Santa Rosa vs. Franklin K. Lane, Secretary of the Interior, et al. Petition for allowance of appeal and assignment of errors and stay of mandate. Court of appeals, District of Columbia. Filed May 8, 1917. Henry W. Hodges, clerk.

41 Saturday, May 12th, A. D. 1917.

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THE PUEBLO OF SANTA ROSA, APPELLANT,
vs.
FRANKLIN KNIGHT LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office. } No. 2981.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States and to stay the mandate until further order in the above entitled cause, it is by the court this day ordered that said petition be, and the same is hereby, granted.

42 United States of America, ss:

To the Pueblo of Santa Rosa,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this 12th day of May, in the year of our Lord one thousand nine hundred and seventeen.

CHAS. H. ROBB,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged:

HENRY P. BLAIR,
Counsel for Appellee.

43 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 40, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Pueblo of Santa Rosa, appellant, vs. Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, No. 2981, April term, 1917, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 21st day of May, A. D. 1917.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on cover:) File No. 25974. District of Columbia Court of Appeals. Term No. 513. Franklin Knight Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, appellants, vs. The Pueblo of Santa Rosa. Filed May 23d, 1917. File No. 25974.

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